

**KENTUCKY PERSONNEL BOARD  
MINUTES OF OCTOBER 10, 2014**

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Chairman Doug Sapp on October 10, 2014, at approximately 9:30 a.m., 28 Fountain Place, Frankfort, Kentucky.

Board Personnel Present:

Wayne "Doug" Sapp, Chairman  
Larry B. Gillis, Vice Chairman  
David B. Stevens, Member  
David F. Hutcheson, Jr., Member  
Donald W. "Don" Blevins, Member  
Amanda Cloyd, Member  
Mark A. Sipek, Executive Director and Secretary  
Linda R. Morris, Administrative Section Supervisor  
Cynthia Perkins, Administrative Specialist

Board Personnel Absent:

Tommy W. Chandler, Member  
Boyce A. Crocker, General Counsel

2. **READING OF THE MINUTES OF REGULAR MEETING HELD SEPTEMBER 12, 2014**

The minutes of the last Board meeting had been previously circulated among the members. Chairman Sapp asked for additions or corrections. Dr. Stevens moved to approve the minutes, as submitted. Mr. Hutcheson seconded and the motion carried 6-0. The Board members signed the minutes.

3. **EXECUTIVE DIRECTOR'S REPORT**

Mr. Sipek stated that the Personnel Board has been invited to give a presentation at the annual EEO conference to be held on November 20, 2014. Mr. Sipek stated that he, along with Mr. Crocker, Mr. Gillis and Ms. Cloyd will be part of the presentation.

At the conclusion of Mr. Sipek's report, Chairman Sapp called for the Personnel Cabinet's report.

#### 4. PERSONNEL CABINET'S REPORT

Hon. Dinah Bevington, Executive Director, and Hon. Sharon Burton, General Counsel, came forward to present the Personnel Cabinet's report.

Ms. Bevington stated that the week of Oct. 5, 2014, was designated "Public Service Recognition Week." School age children participated in a poster contest to show appreciation of public service employees. In addition, the Governor's Ambassador Awards Ceremony was held Wednesday, October 8, at the Frankfort Convention Center.

Ms. Bevington stated that the Cabinet is continuing to phase in the Tobacco Free policy. The Cabinet is working with all the agencies on how the policy will be implemented, how it will be enforced, and maps for all types of workstations.

Ms. Burton provided a summary of the 2015 Kentucky Employee's Health Plan (KEHP). Ms. Burton stated that if a member elected the LivingWell Plan in 2014 and completed the LivingWell Promise, that member is eligible for the 2015 LivingWell Plan. Ms. Burton stated that there was 97 percent compliance of members who fulfilled the Living Well Promise; 137,000 members took the health assessment.

Members who signed up for the 2014 LivingWell Plan, but did not complete the LivingWell Promise, will only be eligible for the Standard plan options.

Vendors chosen to implement KEHP plans are: Anthem Blue Cross Blue Shield will be the medical network and claims administrator. The 2015 plans are basically the same as 2014. CVS/Caremark will be the pharmacy administrator; however, members do not need to use a CVS pharmacy. Humana Vitality will provide the same wellness program in 2015 as they did in 2014. WageWorks will administer the Flexible Spending Accounts and Health Reimbursement Accounts. Compass Smart Shopper will assist participants in selecting the cheapest provider.

The 2015 LivingWell Promise members must either complete a Health Assessment or a Vitality Check between January 1, 2015 – May 1, 2015.

Ms. Burton stated that the 2015 KEHP rates are the same as 2014, except for the Standard CDHP there is a slight reduction in the Parent Plus, Couple and Family plans.

Ms. Burton stated that, for the first time, Flexible Spending Account (FSA) funds up to \$500 remaining in a members account at the end of 2014 plan year will carry over to the 2015 plan year. Anything over \$500 will be forfeited.

Due to federal law changes, the Waiver General Purpose Health Reimbursement Accounts do not meet federal health care reform or consumer protection; therefore, an employee must have other group health care. Medicare, Medicaid and TRICARE are not considered group health coverage, but members may be eligible for the Waiver Dental/Vision HRA only. Mr. Gillis asked about the cap on HRAs, Ms. Burton stated there is no cap on HRAs and balances will carry over to the 2015 plan.

Ms. Bevington stated that open enrollment begins October 13, 2014. Kiosks will be set up at various benefit fairs to assist members.

Chairman Sapp asked about the maximum out of pocket costs that go above the plan for catastrophic claims or “stop loss policy.” Ms. Burton stated that KEHP does not have a “stop loss policy,” however; there are consultants and actuaries that calculate what that maximum out of pocket expense can be. Once an individual reaches the maximum out of pocket costs, the plan covers 100 percent.

Following the Personnel Cabinet’s report, Chairman Sapp then called the parties forward for the first oral argument.

## **5. ORAL ARGUMENTS**

### **A. Kevin Bailey v. Justice and Public Safety Cabinet (Juvenile Justice) (2014-030)**

Present for oral arguments were Appellant, Kevin Bailey, and counsel for Appellee, the Hon. Adam Adkins. After presenting oral arguments, the parties answered questions from the Board.

### **B. Ashley Lewis v. Cabinet for Health and Family Services (2014-058)**

Present for oral arguments were counsel for Appellant, the Hon. Michael Boylan, and counsel for Appellee, the Hon. Jennifer Wolsing. After presenting oral arguments, the parties answered questions from the Board.

### **C. Todd McGuire v. Cabinet for Health and Family Services (2013-065)**

Present for oral arguments were Appellant, Todd McGuire, and counsel for Appellee, the Hon. Carrie Cotton. After presenting oral arguments, the parties answered questions from the Board.

**D. Ronald Nunemaker v. Justice and Public Safety Cabinet (Corrections)  
(2013-262)**

Present for oral arguments were Appellant, Ronald Nunemaker, and counsel for Appellee, the Hon. Amber Arnett. After presenting oral arguments, the parties answered questions from the Board.

**6. INVESTIGATIONS**

**Anonymous Request for investigation of Kentucky Alcohol Beverage Control (ABC)**

-- Response by Public Protection Cabinet

Mr. Sipek stated that an anonymous letter on behalf of the ABC employees was received September 4, 2014. The issues presented in the letter were problems with management and allegations of discrimination, which Mr. Sipek stated is prohibited by KRS Chapter 18A.

A request for a response, along with copy of the anonymous letter, was sent to the Cabinet and ABC. The Cabinet responded that it was aware of these allegations, but does not recognize "anonymous" complaints. The employees have the option of filing a grievance at ABC or Cabinet level.

Mr. Blevins stated that he does not like anonymous complaints. If the staff investigates it, the matter could come back to the Board as an appeal, which Mr. Blevins states could be an issue for the Board. Mr. Blevins asked whether the Board has to investigate. Mr. Sipek stated there is no requirement for the Board to investigate. Mr. Gillis stated that there are a lot of names mentioned in the request, but no one signed it.

Mr. Blevins moved to deny the anonymous request for investigation. Dr. Stevens seconded and the motion carried 6-0.

Mr. Sipek stated that normally the Board would go into closed session. However, the Hon. Cary Bishop, Finance and Administration Cabinet, and the Hon. Mark Brengelman, counsel for Appellant John Hughes, were present to answer questions from the Board regarding the settlement of John Hughes. Chairman Sapp asked the parties to come forward. Mr. Gillis asked what Mr. Hughes' monthly salary was. Mr. Brengelman stated that he did not know monthly salary, but Mr. Hughes made about \$52,000 annually. Mr. Bishop stated that the benefit Mr. Hughes receives from the settlement versus the calculation of the cost of the hearing, witnesses, hotel, hiring temps, etc. (about \$11,406) was a big consideration. Since Mr. Hughes' dismissal, the agency has better service.

Mr. Gillis asked about the wording in the last statement (p. 1) of the settlement where Mr. Hughes admits the Cabinet could prove by a preponderance of the evidence just cause for the action. Both Mr. Brengelman and Mr. Bishop explained that basically neither side concedes to any wrongdoing and that there would be no wrongful termination case in the future. Mr.

Brengelman explained that he drafted the settlement agreement consistent with appellate standard and, if you read further, on p. 2, Mr. Hughes does not admit to any wrongdoing, but both parties wish to resolve the matter.

Mr. Sipek stated that Mr. Bishop is also counsel for Appellee on the second settlement agreement, Cynthia Rice, which the Board may not have seen. Chairman Sapp stated that the Board needs a little time to review it. None of the Board members had any questions for Mr. Bishop.

## **7. CLOSED SESSION**

Mr. Hutcheson moved that the Board go into Executive Session for the purposes of discussing complaints, proposed or pending litigation, and deliberations regarding individual adjudications. Mr. Gillis seconded. Chairman Sapp stated that the motion had been made and seconded for the Personnel Board to retire into closed Executive Session, passed by a majority vote of the members present, with enough members present to form a quorum. Pursuant to KRS 61.810(1) (c), (f), and (j), the Kentucky Open Meetings Act, the Board will now retire into closed Executive Session. Specific justification under the Kentucky Open Meetings Act for this action are as follows, because there will be discussion of proposed or pending litigation against or on behalf of the Board; and deliberations regarding individual adjudication. The motion carried 6-0. (11:20 a.m.)

Mr. Hutcheson moved to return to open session. Dr. Stevens seconded and the motion carried 6-0. (12:15 p.m.)

## **8. CASES TO BE DECIDED**

**The Board reviewed the following cases. At that time, the Board considered the record including the Hearing Officers' findings of fact, conclusions of law and recommendations, any exceptions and responses which had been filed, and oral arguments where applicable.**

### **A. Kevin Bailey v. Justice and Public Safety Cabinet (Juvenile Justice) (2014-030)**

Mr. Hutcheson moved to note Appellee's exceptions, Appellant's response and oral arguments and to accept the recommended order sustaining the appeal to the extent that the three-day suspension be modified to a one-day suspension. Dr. Stevens seconded and the motion carried 6-0.

### **B. Ashley Lewis v. Cabinet for Health and Family Services (2014-058)**

Ms. Cloyd moved to note Appellant's exceptions, Appellee's response and oral arguments and to accept the recommended order dismissing the appeal. Mr. Gillis seconded and the motion carried 6-0.

**C. Todd McGuire v. Cabinet for Health and Family Services (2013-065)**

Mr. Hutcheson moved to note Appellant's exceptions, Appellee's exceptions, Appellant's rebuttal and oral arguments and to accept the recommended order sustaining the appeal to the extent that the seven-day suspension be modified to a two-day suspension. Dr. Stevens seconded and the motion carried 6-0.

**D. Ronald Nunemaker v. Justice and Public Safety Cabinet (Corrections) (2013-262)**

Mr. Hutcheson moved to note Appellant's Exceptions and oral arguments and to defer this matter to the next Board meeting. Dr. Stevens seconded and the motion carried 6-0.

**E. Kimberly Rulo v. Personnel Cabinet (2013-285)  
(Deferred from August and September)**

Mr. Blevins moved to note Appellant's exceptions, Appellee's exceptions, Appellee's response to Appellant's exceptions, Appellant's response to Appellee's exceptions and oral arguments and to accept the Final Order sustaining the appeal to the extent that the dismissal of the Appellant be reduced to a thirty (30) day suspension, as attached to the minutes. Ms. Cloyd seconded and the motion carried 5-0, with Mr. Gillis recusing.

**H. Robert Edwards v. Labor Cabinet (2014-053)**  
[Appellant's exceptions and request for oral argument were returned as untimely]

Mr. Blevins moved to remand this matter to the active docket for further proceedings. Ms. Cloyd seconded and the motion carried 5-0, with Mr. Gillis recusing because he has a personal relationship with a witness.

**I. Kimstance Johnson v. Justice and Public Safety Cabinet (Corrections) (2013-216)**

Mr. Gillis moved to note Appellant's exceptions, Appellee's response and oral arguments and to defer this matter to the next Board meeting. Mr. Hutcheson seconded and the motion carried 6-0.

**J. Bobby Lewis v. Transportation Cabinet (2013-241)**

Mr. Gillis moved to note the Appellant's exceptions and to remand this matter to the active docket for further proceedings. Dr. Stevens seconded and the motion carried 6-0.

**K. Claudia Jackson v. Cabinet for Health and Family Services (2014-041)**

Mr. Gillis moved to accept the recommended order sustaining the appeal. Mr. Hutcheson seconded and the motion carried 6-0.

**L. Walter Rafferty v. Justice and Public Safety Cabinet (Corrections)  
(2013-081)**

Ms. Cloyd moved to accept the recommended order dismissing the appeal. Dr. Stevens seconded and the motion carried 6-0.

**M. William Rawlings v. Justice and Public Safety Cabinet (Corrections)  
(2014-075)**

Mr. Gillis moved to accept the recommended order dismissing the appeal. Mr. Hutcheson seconded and the motion carried 6-0.

**Show Cause Orders – No Response Filed – Appeals Dismissed**

- N. Dana Ashburn v. Cabinet for Health and Family Services
- O. Mary Durrett v. Justice and Public Safety Cabinet (Corrections)
- P. Hope Luney v. Cabinet for Health and Family Services

Mr. Gillis moved to find that the Appellants had not responded to the show cause orders and that the recommended orders be accepted *en bloc* dismissing the appeals for failure to timely prosecute the appeals. Dr. Stevens seconded and the motion carried 6-0.

**9. WITHDRAWALS**

Mr. Hutcheson moved to accept the following withdrawals of appeals *en bloc* and dismiss the appeals. Mr. Gillis seconded and the motion carried 6-0.

- A. Steven W. Green v. Transportation Cabinet
- B. Danny LeMarr v. Justice and Public Safety Cabinet (Juvenile Justice)
- C. Charles Lovett v. Cabinet for Health and Family Services and Personnel Cabinet
- D. Fifi Mboma v. Department of Veterans' Affairs
- E. Randall Murray v. Finance and Administration Cabinet
- F. Taylor Trimboli v. Cabinet for Health and Family Services

## 10. SETTLEMENTS

### A. John Hughes, Jr. v. Finance and Administration Cabinet

Dr. Stevens moved to accept settlement "A" as submitted by the parties, and to sustain the appeal to the extent set forth in the settlement. Ms. Cloyd seconded and the motion carried 5-1, with Mr. Blevins opposing.

### B. Cynthia Rice v. Finance and Administration Cabinet

Mr. Hutcheson moved to accept settlement "B" as submitted by the parties, and to sustain the appeal to the extent set forth in the settlement. Mr. Gillis seconded and the motion carried 6-0.

## 11. OTHER

### A. Settlement Agreement Guidelines

Ms. Dinah Bevington was present on behalf of the Personnel Cabinet.

Chairman Sapp stated that he was asked if the Board was trying to interject itself in settlements between the Cabinet and the employee. Chairman Sapp stated on behalf of the Board that it was not the Board's intention and did not want its interest to be misinterpreted. Chairman Sapp stated it was the Board's duty to approve settlements. Chairman Sapp stated that it would be helpful to the Board if there was more information included in the agreement to make an informed decision.

Chairman Sapp asked Ms. Bevington what she thought of the Settlement Agreement Guidelines. Ms. Bevington stated that she appreciates the Board's interest in more information. However, Ms. Bevington stated that pursuant to regulation, the Board does not need to "approve" settlements just take "final action." Ms. Bevington stated that upon receiving settlements, the Board should decide what information they "need," not what they "desire." Chairman Sapp agreed that was an important point. Ms. Bevington clarified that "final action" means the Board take procedural action to close or dismiss the case. She does not want the Board to feel that they are "liable" for approving settlements.

Chairman Sapp stated that he is uncomfortable trying to decide whether a settlement is good or not. Ms. Bevington stated that is not the Board's role. Mr. Hutcheson stated that it is like a Show Cause Order, a simple order stating something like "This settlement has been received and is no longer before the Board." Therefore, no actual ruling would be made by the Board. Mr. Sipek stated that legal language could be stated, "This case is dismissed as settled." Mr. Gillis stated that settlements have come back before the Board and some settlements have been cited.

Ms. Bevington does agree with the Board that they should receive settlements timely and for the agency to explain in the agreement why a party is getting paid a certain amount, for example, back pay. Ms. Bevington explained that she does not approve settlements or decide whether it's a good decision, she just reviews them to ensure it complies with regulations or merit statutes and can be effectuated.

Chairman Sapp asked Mr. Sipek what is the next step. Mr. Sipek stated that the Board could stop approving settlements, or to continue to approve them with the additional option of knowing the Board is not approving or disapproving the settlement, but that the appeal is final.

Mr. Hutcheson stated that the Board should table the matter until Mr. Sipek and Mr. Crocker could review the regulation in conjunction with what Ms. Bevington stated and write an opinion.

Ms. Bevington stated that the regulation currently requires that settlements must be in writing for review, unless the Board seeks to change it. Ms. Bevington provided changes to the Board's Settlement Agreement Guidelines for the Board's review.

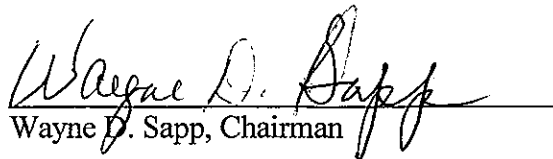
Chairman Sapp said that he would like to get settlement agreements out of the Board's hands. Mr. Sipek stated that historically the Board has approved settlements and not sure how far back it goes. Mr. Sipek stated that the Board needs to figure out a way to go forward. Mr. Gillis stated that the Personnel Cabinet needs a Board Order to issue back pay, etc.

Ms. Bevington stated an issue with Retirement is that they will not process the settlement without a Board Order. Ms. Bevington stated that we should contact Retirement and include them in this process. In the meantime, Ms. Bevington stated the Cabinet would continue to give the Board as much information in the settlement agreements as the parties are comfortable with.

#### **B. Election of Officers**

Mr. Gillis moved to elect Mr. Sapp as Chairman. Dr. Stevens seconded. Mr. Hutcheson moved to amend the motion and re-elect Mr. Sapp as Chairman and Mr. Gillis as Vice-Chairman. Mr. Blevins seconded and the motion carried 4-0, with Mr. Sapp and Mr. Gillis abstaining.

There being no further business, Mr. Gillis moved to adjourn. Mr. Blevins seconded and the motion carried 6-0. (12:55 p.m.)

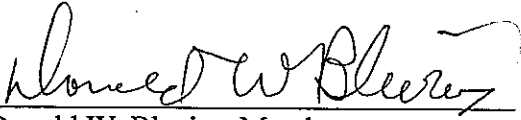
  
Wayne D. Sapp, Chairman

  
Larry Gillis, Vice Chairman

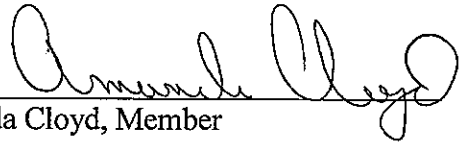


David B. Stevens, Member

David F. Hutcheson, Jr., Member



Donald W. Blevins, Member



Amanda Cloyd, Member

COMMUNWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2013-285

KIMBERLY RULO

APPELLANT

VS.                   **FINAL ORDER REJECTING HEARING OFFICER'S  
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND  
RECOMMENDED ORDER**

**PERSONNEL CABINET  
TIM LONGMEYER, APPOINTING AUTHORITY**

**APPELLEE**

**\*\* \*\* \***

The Board at its regular October 2014 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated July 14, 2014, having noted Appellant's exceptions, Appellee's exceptions, Appellee's response to Appellant's exceptions, Appellant's response to Appellee's exceptions, oral arguments, and being duly advised,

**IT IS HEREBY ORDERED** that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer be rejected and the Board issues its own Findings of Fact, Conclusions of Law and Order as follows:

**INTRODUCTION**

This matter came on for an evidentiary hearing over the course of three days, on March 12, 19 and 20, 2014, at the offices of the Kentucky Personnel Board, Frankfort, Kentucky, before E. Patrick Moores, Hearing Officer. The proceedings were recorded by audio-video equipment pursuant to the authority found at KRS Chapter 18A.

The Appellant, Kimberly Rulo, was present and was represented by Hon. Paul Fauri. The Appellee, the Kentucky Personnel Cabinet, was represented by the Hon. Whitney W. Meagher, of the Cabinet's Office of Legal Services.

Kimberly Rulo appeals the Cabinet's decision of November 18, 2013, to terminate her services as an employee of the Commonwealth of Kentucky. The letter of termination, issued by Walter Gaffield, the Appointing Authority, informed Ms. Rulo that she was being terminated for violation of 101 KAR 1:345, Section 1 (lack of good behavior), and 101 KAR 2:095, Section 9 (Workplace Violence Policy). The termination letter is attached hereto as "**Recommended Order Attachment A.**"

The letter of termination informed Rulo that the Cabinet had found sufficient evidence that on or about the 6<sup>th</sup> day of August, 2013, while en route to her workstation at the Kentucky State University via U.S. Highway 421 from Lexington to Frankfort, she became engaged in a confrontation with a vehicle occupied by three men employed at the Energy and Environment Cabinet, that she alleges was driving recklessly. The letter of termination alleges she pursued the vehicle to the men's workstation, whereupon Rulo "instigated the confrontation during which you directed abusive language towards Mr. Sartipi [the driver] and his passengers and brandished or displayed a gun or an object that looked like a gun in a manner that threatened and intimidated Sartipi and his passengers." [Appellee Exh. 2.]

Rulo timely filed an appeal with the Kentucky Personnel Board on December 9, 2013, in which she alleged that she had no gun with her in her vehicle, and that it was Sartipi that verbally attacked her, and that the investigation of the incident was untimely.

A Pre-Hearing Conference was held before the Kentucky Personnel Board on January 9, 2014, and the matter was scheduled for an evidentiary hearing to be held on March 19-20, 2014. The issue presented was whether the decision to terminate Rulo by the Cabinet was taken with just cause and that the penalty of termination was neither excessive nor erroneous. The Appellee had the burden of proof, which is by a preponderance of the evidence.

By agreement, and due to the unavailability of the witness at the hearing, the testimony of Walt Gaffield, the Appointing Authority for the Cabinet, was taken before the Hearing Officer on March 12, 2014, and was recorded by audio-video equipment pursuant to the authority of KRS Chapter 18A.

The Evidentiary Hearing was conducted on March 19 and 20, 2014. Opening Statements were made by both counsel, during which the Hearing Officer was asked to take judicial notice of the statutory provisions at KRS 508.070: "Wanton endangerment in the second degree." Said request was sustained and a copy of the statute was placed in the record. At the conclusion of the presentation of the evidence, the Hearing Officer ordered that the parties simultaneously submit briefs and responsive memoranda on their respective positions concerning the evidence and the law. Due to a malfunction of the recording device at approximately 11:40:20 during the recorded hearing on March 20, 2014, it was discovered that the electronic recorder has stopped working. The recorder stopped working during the testimony of the witness Jeanne Olivas, in response to a question from Mr. Fauri, counsel for the Appellant, as to whether she would rehire the Appellant, Kimberly Rulo. The Hearing Officer's written notes reflected that the witness' testimony was: "I would rehire her." The attorneys for both parties agreed and stipulated that their notes reflected that the same testimony was made by the witness. A Post Hearing Order

was entered to that effect, which also extended the time in which the parties could submit their briefs.

### **BACKGROUND**

1. The first witness on behalf of the Cabinet was **Abbas Pourghasemi**, who is an environmental engineer with the Division of Energy and was a passenger in the vehicle operated by Mr. Sartipi. Pourghasemi testified he was sleeping on and off during the trip, and as they arrived in Frankfort he noticed a car on the right of their vehicle. The driver, who he identified as the Appellant, was upset and gesturing towards their driver, Sartipi. The Appellant followed them to their work station on Fair Oaks Drive. He said they parked in a space near their office building and the Appellant's car stopped nearby. He said the Appellant's vehicle remained stopped a distance away, but the Appellant had her passenger window down and facing them.

2. Pourghasemi said he got out of the car and asked the Appellant what was her problem, and she responded, "You almost killed five people." Pourghasemi said he proceeded to get his stuff from the trunk of their vehicle, and he heard Sartipi say, in their native language, "Be careful, she's got a gun." He said he looked at the Appellant in her vehicle, which was at a 45 degree angle to him and approximately 20 feet away. He said he saw that she had a gun and was pointing it at Sartipi. He said that he didn't know what happened that upset her.

3. However, as he was driving he received a call from the police on his cell phone and gave his contact information. He prepared an e-mail to Becky Correll describing the incident when he returned to the office on the following morning. He also was interviewed by Dinah Bevington as a part of the Personnel Cabinet's investigation.

4. **Harold L. Sparks, Jr.**, is an environmental engineer at the state water division and was sitting in the rear seat of Sartipi's vehicle. He first noticed the Appellant's vehicle when they were on Leestown Road en route from Lexington to Frankfort. He testified that the traffic was moving very slowly, and that when they entered a passing zone and Sartipi started to pass the Appellant's vehicle in front of them, the Appellant started blowing her horn. He said when they passed a second vehicle, she was blowing her horn again. When they approached a stop sign, the Appellant pulled up beside them on their right side. He described the Appellant as very angry and yelling at them, saying "You endangered five people's lives." He stated that when Sartipi pulled out, the Appellant followed them all the way to their office parking lot. He said that when they parked, she pulled up perpendicular to their car, about 30 feet away and had her window down. He overheard Sartipi, while getting out of the car, ask her, "What is your f-----g problem?" Sparks said she then pointed a gun at them, holding it with both hands and he

described the gun as an automatic pistol. Sparks said that he went into shock with fear she was going to shoot them and that he prayed (silently) that she not pull the trigger.

5. Sparks testified that as they walked to their office building, he wrote down the Appellant's license plate number as she drove away, and that when he entered the building they discussed what had happened and Sartipi called the police. He said that he was so upset when he got to his office, but that he was able to prepare an email to Becky Correll describing the incident. He also gave a statement to the police about what happened. He acknowledged that his description of the distances was a guess. Sparks was also interviewed by Dinah Bevington as a part of her investigation. He disagreed with the statement in her summary that referred to a second car honking at Sartipi. Sparks stated that he was trying to convey that Rulo honked a second time.

6. **Mahmoud Sartipi** is an environmental engineer and testified that he was driving a car pool from Lexington to Frankfort. He said that the traffic on Leestown Road was very heavy and that when they were near the prison facility he passed a car. He stated that as he was pulling back into the driving lane, a car came up behind him and started honking her horn and flashing her lights at him. When they came to a stop sign, he said the Appellant pulled up next to them on the right-hand side and that she started screaming at him. He said they drove about another five miles to their office, and that the Appellant followed them the entire way. He said he slowed down several times, but she would not stop following them.

7. When he parked the car and got out of the vehicle, he said the Appellant pulled up about 2-3 car lengths away and started screaming profanity at him and said, "You put five lives in danger." He said that as he got out of his vehicle he was looking right at her and she then pointed a gun at him, stating that she held it with two hands pointing it at him as they walked into their office building. He said after she drove off, he proceeded to move his car because he feared she would come back and damage his vehicle. He said when he came to the office, everyone was aware of the incident. He called 9-1-1, and when a police officer arrived he gave the officer a statement describing what had happened, and gave him the license number of the Appellant's vehicle. Mr. Sartipi prepared an e-mail for Becky Correll describing what happened. At a later date he was interviewed by Dinah Bevington as a part of the Personnel Cabinet's investigation.

8. **Rebecca "Becky" Correll** is the human resources liaison for the Division of Water. She said that she became aware of the incident early that morning and immediately went to Sartipi's office. She testified that when she arrived, that Mr. Sparks and a police officer were also there. She said that both Sartipi and Sparks were very upset and that their hands were shaking. She had them send her a statement of the incident by email. She said that Pourghasemi had already left and she obtained a statement from him the next day.

9. **Dinah Bevington** has been General Counsel for the Personnel Cabinet since 2008. She received a phone call informing her of the subject incident and, after reviewing the options available and consulting with Walt Gaffield about her concerns, she made the decision to place Rulo on investigative leave. She testified that once she learned a criminal charge was pending, she decided to conduct an investigation. She reviewed the written statements of the three men in the vehicle that were threatened by Rulo, and described their reluctance to talk to her about the incident out of concern for their safety.

10. Bevington testified that she was aware that the matter was being investigated by the Kentucky State Police when she arranged an interview of Rulo through her attorney. Bevington said that Rulo had written notes and went through them, and denied all the allegations. She testified that Rulo admitted following the three men to their place of work to get their vehicle license number before proceeding to her place of work at Kentucky State University.

11. Bevington reported in her "Investigation Summary Related to Allegations of Employee Misconduct by Kimberly Rulo," dated October 22, 2013, that Harold Sparks "... identified himself as the rear passenger in the vehicle driven by Mahmoud Sartipi ... informed that Mr. Sartipi passed a van on a two lane road and pulled in front of it ... the van began honking at Mr. Sartipi after he passed it. Mr. Sparks also recalled Mr. Sartipi passed another vehicle as well, which also honked once they pulled in front of it." [Appellee Exh. 3, page 2.]

12. Bevington also spoke with Rulo's supervisor, Wes Swarner, who described her as a good and valued employee. He told her that he had received a preliminary copy of the report of the incident and was shocked, stating it was totally out of character for Rulo. Bevington stated that she had access to the police reports and the criminal citation against Rulo. She said it was the totality of Rulo's conduct and not the issue of a gun that caused her to consider the seriousness of the violation. Bevington explained that she considered alternative progressive disciplinary action, but that she found nothing was appropriate. She also said the Rulo's work performance was irrelevant. She discussed the disciplinary action with Walt Gaffield and they agreed that termination of Rulo's employment was appropriate.

13. Bevington testified that she ultimately concluded that Rulo's conduct was a violation of the Workplace Violence policy. Based on the severity of the allegations, and the admissions of the verbal conversations, Bevington concluded that it was more likely than not that Rulo had brandished a weapon. Bevington supported her conclusion by stating that some of the things Rulo said didn't add up, leading her to believe the incident was a serious violation of the Workplace Violence policy. She also was curious and concerned as to why Rulo considered

Sartipi to be driving so erratically, yet when she reported to work she did not call the police nor did she discuss it with anyone at her workplace.

14. Bevington testified that once she turned in the investigation, she was removed from the disciplinary process. Despite having discussed alternative disciplinary action with Gaffield, she made no recommendation in the preparation of her investigative report. She stated that she had a dual obligation to the workplace and the employee. She said that she concluded that Rulo had the gun, even though she did not request a search of the car for a gun, as she did not believe she had the authority to search her private property. Bevington added that even without the gun and that no one ever said that Rulo got out of her car to confront the men, she would have recommended Rulo's dismissal upon the admitted facts that she pursued another vehicle and became involved in a verbal altercation with the men in that vehicle. She added that the confrontation was prolonged by Rulo, as it was initiated in Fayette County on Leestown Road and continued to Fair Oaks Drive in Frankfort, on state property, demonstrating the risk of a state employee with a propensity to acts of violence.

15. **Bryce L. Caldwell** is a licensed attorney, located in Frankfort and focusing his practice on state and federal criminal defense. He testified that he was retained by Rulo to defend her on a felony charge, that was amended to a misdemeanor and they entered a plea on January 28, 2014. The plea did not include an admission as to the use of firearms. Caldwell said that Rulo accepted his recommendation for the plea, as otherwise she would face a longer process of going before a grand jury, and undergoing a trial, with greater risk of penalty and attorney fees. Prior to entering the plea, she had been terminated by the Cabinet.

16. Caldwell testified that he investigated the scene of the incident but was unable to find any video/security tapes. He reiterated that the plea to Wanton Endangerment, 2<sup>nd</sup> Degree, did not include any admission as to the use of a gun nor to any act on state property, but went solely to her conduct in following the other vehicle in her attempt to obtain the license tag number of the other vehicle. She received a thirty day sentence, suspended for twelve (12) months. He noted that she was not under any supervision. During the twelve months, the Appellant was to have no new criminal offences, no contact with the victims, and was not to use or possess any firearms or weapons. Caldwell testified that she could move the court to have the matter dismissed and expunged following the twelve months.

17. **Jeanne Olivas** is employed with the Personnel Cabinet as a Consulting Services Manager in the Government Services Center, which is responsible for the training and management of employees. Their offices are located on the Kentucky State University campus. Rulo was part of her staff as a Performance Consultant III, the highest level. Olivas said that Rulo had previously worked for a software company, and that her experience included having also worked in personnel matters. Olivas said that Rulo had expertise to work in face-to-face

training with software design and development, and that her annual performance ratings were always in the "Greatly Exceeds" rating.

18. Olivas testified that although she was aware of the allegations against Rulo, she knew nothing of the details or specifics. She attended the meeting between Rulo and Gaffield, during which he presented her with the letter of investigative leave, at which Rulo expressed her disbelief but made no other comments. She said that Rulo returned to her work station and gathered her personal items from her cubicle, following which Olivas escorted her to her vehicle. Olivas said there was no discussion about the incident or any details and that she was shocked by what was happening. Olivas said she was not aware of any involvement of a gun, becoming aware of the allegation when it showed up on a Facebook entry the next day. Olivas said she had no discussion with Rulo about the incident and the allegation of use of a gun, as she felt it would not be appropriate. She also did not read the letter of investigative leave.

19. Olivas said she had no recollection of Rulo's arrival at work on the morning of the incident, as she was always on time and at her work station by 7:30 in the morning. She said that Rulo always presented herself as very professional, reserved, friendly, quiet, respectful and intelligent, and that she was often the voice of reason. She said she was not aware of any outbursts from Rulo or her having any disputes with other employees. Olivas said she was aware of a previous conflict matter Rulo had on the KSU campus involving a vehicle, but was not a witness to the matter. She said that most of the employees would gather together at lunch and share news about family, work, classes and personal matters.

20. Olivas said she never discussed the matter with Rulo, nor did she see or read the investigation report, adding that the only thing she discussed with Rulo was to ask her if she needed anything. Olivas testified that she would rehire Rulo.

21. **Jesse Dale Rulo** is the husband of the Appellant for more than 19 years. He testified that he talked over the phone to his wife as she was en route to work, as he had lost his keys and she suggested he look in a certain place. He called back a few minutes later and she reported to him that a car had passed her and was driving erratically. He said that he again talked to her later that day and she told him that she had been put on administrative leave but couldn't tell him why. The next day he got a call from her telling him that she was being taken to jail, and said she had no idea why she was arrested. It was not until he got her released the next day that he learned why she was arrested.

22. Mr. Rulo acknowledged that they own a gun, as she obtained a pistol eight years ago. He said that the gun was obtained for protection because he works late, their home is located between a jail and two prisons, and there have been break-ins in their neighborhood. Her only training in using a handgun was informally by her brother. He said the only time he was aware she ever touched a gun was when they went to a range, and that the rest of the time it was stored in their bedroom closet.

23. Mr. Rulo said his wife took him to the scene where the incident occurred and the described the respective positions of the vehicles, while she explained the events to him. He said that he paced off the distances, and the fact that her vehicle windows are tinted caused him to feel there were a lot of issues about the distances and their ability to accurately state what happened. He concluded that he felt the charges were absurd. He further said he has ridden with her on several occasions and that she is not an aggressive driver.

24. **William Keith Bivins**, the brother of the Appellant, testified that he became aware of the incident when he received a phone call from his sister telling him that a Kentucky State Police trooper was at her house to arrest her. He said the trooper allowed her to call him on her cell phone while he was driving her to the jail. Bivins testified that he has been around guns since he was a teenager, has participated in shooting matches, shoots at least once a month, is a member of the NRA and has a concealed carry permit. He testified that he had twice taken his sister to Bud's Gun Shop in Lexington in 2008 or 2009 and taught her how to use the gun on their indoor training range. He said that after the two sessions, she was scared of the gun and would close her eyes when she pulled the trigger. He said that he could not get her over her fear of guns, and that he was certain that her gun had not been taken out of the gun case in their closet since he last took her to the training range.

25. He testified that he checked out the gun and found it dusty and looking like it had not been cleaned in a long time. He said that it is a difficult thing to use a gun while sitting in a vehicle, as the driver has to deal with the steering wheel and seat belts. He testified that he was somewhat knowledgeable about the gun laws in Kentucky, and that if a gun is transported in a vehicle and concealed, it must be where it is not readily accessible.

26. Bivins said that the reason his sister called him while she was being taken to jail is because his wife works for the law firm of Landrum & Shouse in Lexington. He stated that he told his sister to stay calm and that he would get an attorney there to take care of her.

27. **Kimberly Rulo**, the Appellant, testified that she was employed by the Government Services Center over four years ago. She was involved in "E-Learning," delivering training to remote state employees. She had been previously employed with a software development firm. She stated that she has no prior disciplinary problems and that her performance evaluations were always high.

28. Rulo testified that on the morning of August 6, 2013, she was driving en route to her job in Frankfort from Lexington on U.S. Highway 421 (Leestown Road). She received a phone call from her husband inquiring if she had his keys. When they finished their call she noticed a car behind her driving very close to her vehicle, with 5-6 cars in front of her. She stated that the car behind her passed her vehicle and cut back in front of her. She said she honked her horn and the driver flipped her the middle finger gesture in front of his rearview mirror. She said that the vehicle then passed another car and that vehicle being passed honked its horn, whereupon she saw the driver of the passing vehicle give the middle finger gesture to that driver.

29. Rulo testified that her husband called her again and she explained to him what had just happened. She said he told her to back off from the vehicle, which she did. She said that when they approached Frankfort, the vehicle that passed her was just ahead of her, weaving in and out of traffic. When they got on the ramp off Leestown Road, she said she could see the driver and the back seat passenger flip the middle finger gesture at the driver of the car in front of her. She said she decided to follow them to try to get their license plate number, and after they got onto U.S. 60, she watched the vehicle continue to swerve in and out of traffic. She said she was generally 2-3 car lengths behind the vehicle, but she was never close enough to get the license number. She said she followed them to Fair Oaks Drive and by the time they turned onto Lewis Ferry Road she was far behind them. She said they never pulled over and she was not able to get close enough to them to get their license plate number.

30. Rulo testified that when the vehicle parked, she saw there were three men in the car. She said she rolled down her window about half-way to be able to see the plate number, and she started to write the number on a napkin on her center console, when she heard a man yell at her, gesture and ask her, "What are you f-----g doing?" She said she replied, "Do you realize you endangered people?" She said that man, Sartipi, started to approach, came within ten feet of her car and responded, "F--- you, bitch!" She responded, "You need to be reported," then she started to turn around in the parking lot, having been able to only write down the last three letters of the plate number. She said she didn't know which way to exit the parking lot except the same way she came into the lot.

31. Rulo said she went on to work and was on time. She put her lunch in the refrigerator of the lunch room, and started working. At approximately 11:15, she received a call from Wes Swarner asking her to join him, Jeanne Olivas and Walt Gaffield in the conference room. When she arrived, she said Gaffield told her that three male employees had accused her of threatening them. She said Gaffield gave her a letter telling her that she was put on investigative leave. She then called her husband and told him what had happened. She said that if she had known she was being accused about pointing a gun at the men, she would have insisted that her car be searched. The next morning a state trooper came to her house to arrest her. She said he did not put handcuffs on her and allowed her to call her husband, but she was unable to reach him. She then called her brother and he said he would call his wife to get a lawyer for her. She said she was later met by Bryce Caldwell who said he was her attorney

32. Rulo testified that when she arrived at work after her encounter with the three men, she did not say anything to anyone as she was not aware that there were any issues about the incident. She stated that she thought the incident was over. She said her husband and brother accurately described her discomfort about having and learning to use a gun, and that she never felt comfortable with a gun. She denied having a gun in her vehicle and that she pointed a gun at the three men. She testified that she would never carry a gun in her vehicle because she was uncomfortable with them, that she would never shoot anyone, that her children are always in her car and she didn't want them near the gun.

33. **Walter Gaffield** is the Executive Director of the Office of Administrative Services of the Personnel Cabinet, and the Appointing Authority for the Cabinet. He stated that he received a call that Rulo had brandished a gun at three state employees and that the state police was investigating the incident. He said he consulted with the legal department, wrote a letter putting Rulo on investigative leave, and determined that Dinah Bevington of Legal Services would lead the investigation. He said there was no mention of specific charges or the involvement of a gun in the Investigative Leave letter, as they needed to complete the investigation to detail specific charges. He stated the reason she was placed on leave was because of the confrontation with the three men.

34. Gaffield testified that the purpose of the letter of investigative leave was to allow them to study the matter and what happened. Gaffield said he did not review her personnel file, her work performance evaluations, nor did he discuss her work with her supervisors, as he did not consider them relevant. He also did not read the police report. He said that all he knew about the incident was in the investigative report, and that he was satisfied that the information set out in the investigative report was sufficient. He determined that the statements of the three men were consistent enough to lead him to conclude that she brandished a gun, or what appeared to be a gun.

35. Gaffield said he considered progressive discipline but the severity of Rulo's conduct caused him to believe it was inappropriate. Following the Pre-Termination Hearing, he met with the legal staff and decided that termination was appropriate. The basis of the decision to terminate Rulo was her violation of the Workplace Violence Policy set out at 101 KAR 2:095, Section 9.

### **FINDINGS OF FACT**

1. The Appellant, Kimberly Rulo, was employed as a Performance Consultant III with the Government Services Center (GSC) which is part of the Personnel Cabinet. The Appellant was employed with GSC for four and a half years. She lives in Lexington and commutes daily to her office in Frankfort, which is located on the Kentucky State University campus.

2. On the morning of August 6, 2013, Appellant was on her normal morning commute to her office from Lexington to Frankfort. While driving on U.S. HWY 421 in Fayette County, the Appellant was passed by another vehicle. At the time traffic was heavy and there were five or six cars directly in front of the Appellant. The Appellant felt the other vehicle was driving dangerously and she honked her horn at the vehicle as it passed her.

3. The vehicle, which passed her, was driven by Mahmoud Sartipi, an employee with the Division of Water. He had two passengers, Harold Sparks and Abbas Pourghasemi, who were also employees of the Division of Water. The Appellant did not know these individuals and did not know they were state employees.

4. After passing the Appellant's vehicle, Mr. Sartipi passed another vehicle and was honked at again.

5. The Appellant's vehicle encountered Mr. Sartipi's vehicle again at the exit ramp from U.S. 421 to U.S. 60 in Franklin County. The Appellant normally would proceed straight on U.S. 421 and drive directly to Kentucky State University campus where her office was located. On this occasion she saw Mr. Sartipi's vehicle pass another vehicle in an unsafe manner and she decided to follow the vehicle to obtain the license number and report the unsafe driving. On this exit ramp, the principals make allegations against each other. Ms. Rulo alleges that Mr. Sartipi passed another vehicle in an unsafe manner and that he and a passenger made an obscene gesture at the other driver. Mr. Sartipi, Mr. Sparks and Mr. Pourghasemi deny this allegation. Mr. Sartipi, Mr. Sparks and Mr. Pourghasemi allege that Ms. Rulo pulled up alongside their vehicle on the shoulder of the road and yelled at Mr. Sartipi regarding his driving. Ms. Rulo denies these allegations. The Board finds that the Appellant became concerned about Mr. Sartipi's driving and decided to follow him and not follow her normal course to her workplace. The Appellant

followed Mr. Sartipi's vehicle on U.S. 60 and eventually onto U.S. 127 to Fair Oaks where Mr. Sartipi, Mr. Sparks and Mr. Pourghasemi worked.

6. The Appellant followed Mr. Sartipi's vehicle to the parking lot at the Fair Oaks building. While some distance away, the Appellant began writing down the description of the vehicle and was going to write down the license number. When he got out of his vehicle, Mr. Sartipi saw the Appellant writing down the number, recognized that she had followed his vehicle for some distance and asked her, "What is your f----g problem?" The Appellant responded by telling Mr. Sartipi that he was driving in an unsafe manner and cursed at him as well.

7. While Mr. Sartipi and the Appellant were engaged in a heated exchange, Mr. Sartipi, Mr. Sparks and eventually Mr. Pourghasemi thought they saw the Appellant with a gun pointing it at Mr. Sartipi. Appellant did not have a gun and had nothing more than a marker and a cell phone in her hand.

8. The Appellant left the scene following this heated exchange without obtaining Mr. Sartipi's license number.

9. Mr. Pourghasemi and Mr. Sparks wrote down the Appellant's license number and Mr. Sartipi, at the suggestion of coworkers, called the police.

10. Mr. Sartipi and Mr. Sparks gave statements to the police and their employer regarding these events on August 6, 2013. Mr. Pourghasemi left shortly after they arrived at Fair Oaks for previously scheduled field work on that date. He provided contact information for the police and a written statement to his employer regarding these events the following day.

11. The Appellant proceeded to her workplace and did not discuss the incident with anyone.

12. Officials from Mr. Sartipi's agency contacted the Personnel Cabinet when they discovered the driver of the Appellant's vehicle through the license number. The Personnel Cabinet placed the Appellant on investigative leave at approximately 12:30 p.m. on August 6, 2013. The Appellant was given written notice of her special leave and told that it was due to "allegations of misconduct, specifically that you allegedly harassed and threatened three state workers this morning at the Fair Oaks complex." The Appellant was also informed that if the allegations are supported by the investigation, she would be in violation of 101 KAR 1:345, Section 1, and the Commonwealth's policy on Harassment Prevention. No mention was made to the Appellant of the allegation that she had pointed a gun at three employees at the Fair Oaks parking lot. No one asked the Appellant if she had a gun and no one searched her vehicle or her belongings for a gun.

13. The Personnel Cabinet conducted an investigation and dismissed the Appellant effective November 20, 2013. The Appellant was found to be in violation of 101 KAR 1:345, Section 1, "Lack of Good Behavior" and 101 KAR 2:095, Section 9, "Workplace Violence Policy." She was accused specifically of making "a threatening statement" and "brandishing or displaying a weapon or an object that looks like a weapon that would present a safety risk to a state employee or a member of the general public." Because she followed Mr. Sartipi's vehicle to 200 Fair Oaks Lane, the Appellant was accused of instigating a confrontation "during which you directed abusive language towards Mr. Sartipi and his passengers, and brandished or displayed a gun or an object that looked like a gun in a manner that threatened and intimidated Mr. Sartipi and his passengers."

14. As a result of the report filed by Mr. Sartipi, the Appellant was charged with three felony counts of wanton endangerment. The Appellant plead guilty to three counts of misdemeanor wanton endangerment. Her criminal attorney, Hon. Bryce Caldwell, testified that her guilty plea was only for her driving in Franklin County before she entered state property at Fair Oaks and did not include any admission that she had a weapon of any kind. The letter which dismissed the Appellant did not contain any allegations regarding the criminal charges.

15. The Appellant denied carrying a gun with her in her vehicle on August 6, 2013. The Board believes the Appellant's testimony, especially in light of the fact that she drove her children in the vehicle every day.

16. The Board finds that the Appellant, by following the vehicle driven by Mr. Sartipi, did instigate a confrontation in the parking lot at Fair Oaks Complex. Appellant was responsible for this volatile confrontation between Mr. Sartipi and his passengers and herself, which could have had more serious consequences. The Appellant's words and actions put the three passengers of the other vehicle in fear to the point that they believed they saw her with a gun, although the Board finds that she did not have one.

17. As a result the Board believes that the Appellant was guilty of a lack of good behavior by her conduct in the parking lot at Fair Oaks Complex and that disciplinary action is warranted.

18. The Board finds that the penalty of dismissal is excessive and erroneous under all the surrounding circumstances of this case. These circumstances include the fact that the Appellant did not have a gun. The Board also makes this finding in light of the Appellant's otherwise unblemished record during the course of her employment with the Personnel Cabinet.

19. The Board finds that the appropriate disciplinary action for the Appellant's conduct is a thirty (30) day suspension.

20. Although the Board has rejected the Hearing Officer's Findings of Fact, Conclusions of Law, and Recommended Order, the Board finds that the Hearing Officer acted appropriately during the hearing in this case and conducted himself in a professional manner. The Board is aware of the allegations filed by the Appellee with its response to exceptions including the two Affidavits. Nonetheless, having reviewed the tape of this proceeding the Board finds that the Hearing Officer conducted himself in an appropriate manner throughout the proceedings. No party suffered prejudice in the way the Hearing Officer conducted the proceedings.

### **CONCLUSIONS OF LAW**

1. The Board concludes that the Appellant violated 101 KAR 1:345, Section 1, by her actions in the parking lot at Fair Oaks Complex and a thirty-day suspension was the appropriate penalty for her conduct.

2. The Board concludes that the Appellant did not violate 101 KAR 2:095, Section 9, the Workplace Violence Policy. The Board concludes the Appellant did not make threatening statements and did not brandish or display a weapon.

3. The Board further concludes that the Appellant's conduct before she reached the parking lot at Fair Oaks Complex did not occur at the workplace or involve any work-related activity. As such, any poor judgment or dangerous driving she engaged in does not constitute just cause for any disciplinary action. The Board concludes that before she arrived at the Fair Oaks Complex she did not engage in any private conduct which would harm the "legitimate interests of government." See *Perkins v. Stewart*, 799 S.W.2d 48, 51 (Ky. App. 1990).

4. The Board in reducing the penalty from a dismissal to a thirty-day suspension and reinstating the Appellant with back pay believes that a KEAP referral for the Appellant is appropriate. 101 KAR 2:160.

**ORDER**

**IT IS HEREBY ORDERED** that the appeal of **KIMBERLY RULO VS. PERSONNEL CABINET (APPEAL NO. 2013-285)** is **SUSTAINED** to the extent that the dismissal of the Appellant be reduced to a thirty (30) day suspension and that the Appellant be reinstated to her previous position or a position of like pay and status with back pay and benefits. **[KRS 18A.105 and 200 KAR 12:030.]**

The parties shall take notice that this Order may be appealed to the Franklin Circuit Court in accordance with KRS 13B.140 and KRS 18A.100.

**SO ORDERED** this 14<sup>th</sup> day of October, 2014.

**KENTUCKY PERSONNEL BOARD**

  
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**MARK A. SIPEK, SECRETARY**

A copy hereof this day mailed to:

Hon. Whitney Meagher  
Hon. Paul Fauri



**PERSONNEL CABINET**

501 High Street, 3<sup>rd</sup> Floor  
Frankfort, Kentucky 40601  
Phone (502) 564-7430  
Fax (502) 564-7603  
[www.personnel.ky.gov](http://www.personnel.ky.gov)

**Steven L. Beshear**  
Governor

**Tim Longmeyer**  
Secretary

November 18, 2013

*Via Regular and Certified Mail*

Ms. Kimberly Rulo

Dear Ms. Rulo:

Having considered all statements made on your behalf during your pre-termination hearing held on November 12, 2013, I have determined that the clear weight of the evidence establishes that you committed the charges as outlined in my letter to you dated October 25, 2013.

Therefore, based on the authority of KRS 18A.095, you are hereby notified that you are officially dismissed from duty and pay effective November 20, 2013.

You are being dismissed from your position for violation of 101 KAR 1:345, Section 1 (lack of good behavior) and 101 KAR 2:095, Section 9 (Workplace Violence Policy), for the specific reasons outlined in my letter to you dated October 25, 2013, and these reasons are again indicated as follows:

A thorough investigation surrounding the August 6, 2013 incident involving you was completed by this Cabinet. This investigation is attached as Exhibit 1 and is incorporated in its entirety.

Based on this investigation and the statements you have provided, your actions on August 6, 2013, are a direct violation of the state government Workplace Violence Policy, 101 KAR 2:095, Section 9(1)(b) which prohibits "...a threatening statement, harassment, or behavior that gives a state employee or member of the general public reasonable cause to believe that his health or safety is at risk." Additionally, specific behavior that is prohibited includes "[b]randishing or displaying a weapon or an object that looks like a weapon in a manner that would present a safety risk to a state employee or a member of the general public or threatens or intimidates them; [and i]ntimidating, threatening, or directing abusive language toward another person, either verbally, in writing or by gesture[.]" 101 KAR 2:095, Section 9(2)(b) and (c).

Specifically, on August 6, 2013, you traveled in your van from Lexington, Kentucky to Frankfort, Kentucky in order to report to work. You traveled by way of Leestown Road and Versailles Road from Lexington to Frankfort. Your workstation is located at Kentucky State University at 400 East Main Street, Frankfort, Kentucky.

On that same date, Mr. Harold Sparks, Mr. Abbas Pourghasemi, and Mr. Mahmoud Sartipi, employees of the Energy and Environment Cabinet Division of Water, commuted together from Lexington, Kentucky



Kimberly Rulo  
November 18, 2013  
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to their workstation located at 200 Fair Oaks Lane, Frankfort, Kentucky. Mr. Sartipi drove the vehicle which transported these employees. The vehicle traveled by way of Leestown Road and Versailles Road during the commute.

While travelling Leestown Road, the vehicle operated by Mr. Sartipi approached and passed your van. You caught up to Mr. Sartipi's vehicle at the intersection of Leestown Road and Versailles Road. Upon approaching the intersection, you pulled up on the right side of Mr. Sartipi's vehicle and initiated a verbal altercation with Mr. Sartipi and/or the passengers in his car by yelling and acting belligerent. After Mr. Sartipi turned right onto Versailles Road, you intentionally followed his vehicle to his workstation located at 200 Fair Oaks Lane, rather than proceeding to your workstation at Kentucky State University.

Upon your arrival at 200 Fair Oaks Lane, a verbal altercation ensued between you, Mr. Sartipi, and his passengers at approximately 7:15 a.m. Your admitted pursuit instigated the confrontation during which you directed abusive language towards Mr. Sartipi and his passengers, and brandished or displayed a gun or an object that looked like a gun in a manner that threatened and intimidated Mr. Sartipi and his passengers.

As a result, your actions on August 6, 2013, violated the policy outlined above.

In accordance with KRS 18A.095, you may appeal this action to the Personnel Board within sixty (60) days after receipt of this notice, excluding the date notification is received. Such appeal must be filed in writing using the attached appeal form and in the manner prescribed on the form.

Sincerely,



Walt Gaffield  
Appointing Authority

Attachments: Exhibit 1- Investigation Summary  
Appeal Form

cc: Secretary, Personnel Cabinet  
Personnel File  
Hon. Paul Fauri, via fax (502) 223-5676